

| Housing Select Committee | | | |
|--------------------------|--|-------------------|---|
| Title | Working in the Private Rented Sector. | | |
| Key decision | Yes | Item no | 6 |
| Wards | All | | |
| Contributors | Executive Director of Customer Services Head of Law | | |
| Class | Part 1 | 9th November 2017 | |

1. Summary

1.1 The purpose of this report is to:

- provide an update on the work of the Private Sector Housing Agency (PSHA), including the delivery of the additional licensing scheme introduced in February 2017. Committee are asked to note the 55% increase in the number of licences secured, or in the process of being secured, over the first seven months of this year from 231 to 420 (details in tables 1 & 2 below):
- summarise some of the key policy changes and developments relevant to the Private Rented Sector (PRS);
- summarise the new tool of Civil Penalty Notices available to tackle poor standards in the PRS introduced in the Housing & Planning Act 2016 to add to the existing Housing Enforcement powers;

2. Recommendations:

2.1 The Committee is ask to:

- consider and note the content of the report, especially relating to the licensing scheme and the future direction for managing the PRS;
- consider and agree the refreshed Housing Enforcement Policy introducing Civil Penalty Notices as an additional tool to tackle poor practice in the Private Rented Sector prior to referral to Mayor & Cabinet.

3. Policy Context:

3.1 The housing landscape is rapidly changing and demand is increasing across all tenures. The private rented sector in Lewisham is growing rapidly – having doubled in size since 2001 it now consists of more than 30,000 homes and makes up more than 25% of all households in the Borough. Rich and poor, families and single people are now all relying on the private rented sector to provide a home. This is consistent with the trend across London where the growth in private renting continues.

3.2 Despite the increasing costs of private renting, the sector is expected to grow further in Lewisham to a level comparable with, or even in excess of, the social rented sector which is 31% based on 2011 census data. This is due in part to the relative unaffordability of home ownership as a result of rapidly increasing house prices, the large numbers of households on the housing waiting list (9,700 households as of September 2017) and relatively low levels of lets, all of which when combined means that Lewisham residents are more reliant on the private rented sector than ever

before. The council recognises this and continues to act creatively by developing relationships and working in close partnership with private landlords to drive up standards and offer longer term tenancies, thereby ensuring residents have more choice. This is especially pertinent given that private renting remains the only option for many low income households and those in need.

- 3.3 As the size of the PRS increases tools are being developed both by national Government to address the worst abuses of tenants by criminal landlords but additionally in London where the problems are the most acute to improve standards and enhance the powers of authorities to act against the worst offenders. For example, following Government consultation late in 2016 the Government confirmed their intention to widen mandatory licensing to HMOs to exclude the 3 storey requirement whilst retaining the threshold at a minimum of 5 people. The introduction was planned for October 2017 but there have been delays due to other Government priorities. It is likely that the new scheme will be introduced in April 2018, and so work is ongoing to prepare for that scheme by identifying potential licensable HMOs that may fall under the new scheme on our current visits and speaking to landlords about the requirements. Further details are set out below relating to the licensing schemes in the Borough.
- 3.4 The London Mayor is also committed to tackling standards in the PRS and tackling the worst landlords and is launching a new online database that will “name and shame” rogue landlords. The new database is being built in partnership with all London Boroughs and will be published on the Mayor’s website. It will cite criminal landlords and letting agents who have been successfully prosecuted for housing offences. The Mayor believes it will give Londoners “greater confidence in renting in the capital”, allowing them to check a prospective landlord or letting agent before moving into a property, and acting as a deterrent to the minority of landlords and agents who behave dishonestly. This register will also be available to Councils across the capital to easily share information on enforcement and investigations, especially relating to rogue landlords to support more effective joint working. Initially the scheme was piloted with six councils — Newham, Brent, Camden, Southwark, Kingston and Sutton. Lewisham are planning to join in the second roll out in November. The stated aim is to “protect London’s 2 million private renters”. This scheme will sit alongside the national rogue landlord database summarised below.
- 3.5 Newham Council are also launching in October 2017 a register of local lettings agents working in their Borough which includes a star rating from 1 – 5 stars. The rating of the agents will be affected if they fail to refund deposits, deal with property repairs effectively or pass rental on to landlords as well as charge “unjustified” lettings fees. This is a new and exciting scheme which could be rolled out across other Boroughs.
- 3.6 Other changes include the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 which establish a minimum level of energy efficiency for privately rented property in England and Wales. The regulation means that, from April 2018, landlords of privately rented domestic and non-domestic property in England or Wales must ensure that their properties reach at least an Energy Performance Certificate (EPC) rating of E before granting a new tenancy to new or existing tenants. These requirements will then apply to all private rented properties in England and Wales – even where there has been no change in tenancy arrangements – from 1 April 2020 for domestic properties, and from 1 April 2023 for non-domestic properties.”
- 3.7 The contents of this report are consistent with the Council’s policy framework. It supports the achievements of the Sustainable Community Strategy policy objectives:

- Ambitious and achieving: where people are inspired and supported to fulfil their potential.
- Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.
- Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.

The report is also in line with the Council policy priorities, in particular:

- Decent homes for all - Investment in social and affordable housing, improve housing conditions and tackle homelessness

The work of the Agency will also help meet the Council's Housing Strategy 2015-2020 in which the Council commits to the following key objectives:

- Helping residents at times of severe and urgent housing need
- Building the homes our residents need
- Greater security and quality for private renters
- Promoting health and wellbeing by improving our residents' homes

4. Working in the Private Rented Sector:

- 4.1 The Private Sector Housing Agency was re-merged in June 2017 bringing the key services that work with the private sector, Empty Homes, Rogue Landlord services, Licensing & Enforcement, Grants and Loans to support frail and disabled clients to remain in their homes and the Procurement team that source temporary accommodation for a range of Council services. Re-forming this team brings together various areas of expertise under one manager.
- 4.2 One of the key priorities for the Agency is to deliver both the mandatory and additional licensing schemes (detailed below) to help drive up standards in the private rented sector.

Mandatory & Additional Licensing Update:

- 4.3 A series of reports to Housing Select Committee and Mayor and Cabinet have been submitted over the last few years which have set out the work of the Private Sector Housing Agency delivering schemes that tackle rogue or criminal landlords; that address property standards through targeted enforcement and most recently sought and secured approval for an expansion of an additional licensing scheme which was launched on the 11th February 2017.
- 4.4 The Council currently operates two separate licensing schemes the:
- Mandatory scheme relating to all Houses in Multiple Occupation (HMOs) that are three storeys or above with shared bathroom or kitchen facilities, where there are at least five people living in two or more households. The standard fee is £500 per lettable unit/room over 5 years (£100 pa) to a maximum of £5,000 per property, although there are exemptions for accredited landlords, early application and multiple landlords. This is a national scheme operated by all Councils, although the fees are specific to Lewisham.
 - Additional licensing relating to HMOs above commercial premises where there are at least three people living in two or more households, or poorly converted privately rented self-contained flats. This scheme has been operating since February 2017 and is Lewisham specific. The same fee regime is in place as above.

- 4.5 The reasons for adding an additional licensing scheme in Lewisham was because all available data highlighted that the poorest standards, conditions and hazards in the private rented sector are to be found in shared accommodation and within flats over commercial properties and data was available to support the case. The following sets out some of the results from this scheme as the work rolls out.
- 4.6 Below are tables to show the performance to date and the lessons we are learning from this process.

Table 1 shows the numbers of properties which have been licensed by year:

| Date: | Number of licenced properties | Mandatory or additional |
|-----------------------------|--------------------------------------|--------------------------------|
| 31 st March 2013 | 169 | Mandatory |
| 31 st March 2014 | 168 | Mandatory |
| 31 st March 2015 | 185 | Mandatory |
| 31 st March 2016 | 196 | Mandatory |
| 31 st March 2017 | 231 | Mandatory |

Table 2 shows in more detail performance over this 2017/2018 financial year to 1st October 2017:

| | Numbers |
|--|----------------|
| Mandatory licensed properties | 286 |
| Additional licensed properties | 45 |
| Total Licensed properties (both mandatory and additional) | = 331 |
| Total new draft licences issued awaiting compliance documents from landlords. (Landlords pay for a draft licence and then have to send in a number of compliance documents – like gas certificates. Once received an inspection visit is booked and a full licence is issued) | 50 |
| Licences still to be renewed from 01/11/2017 – 31/03/2018. | 39 |
| Properties identified by officers as HMOs on visits or where a licence application has been started by a landlord but not completed where there is a likelihood they are an HMO. A large % of these are either in the process/or in dispute. | (214) |

These tables highlight the success that the PSHA is having finding and licensing HMOs, compared to previous years. The work that is underway is also bringing out some key lessons for the service, trialling different approaches, testing what works and what does not yield the desired outputs as well as identifying some areas where focus should be placed for campaigning more widely in the future or where an extension to licensing could be beneficial. The Agency are confident that the ambitious targets (summarised below) will be delivered both in this and the remaining 4 years of the project. However it should be recognised that it is very time intensive finding and licensing HMOs. More details will be provided at the meeting. Officers are delivering a robust and assertive response, backed up by legal action if necessary, and again that adds to the time and resources required.

The target was to identify and licence 4500 licensable units/rooms under the additional scheme. The number was estimated based on initial street surveys. This is a very ambitious target and would equate to around 1500 properties over the 5 year period which, with an average occupancy of additional HMOs of 3 lettable units/rooms per property, would require **300 new additional properties per annum for 5 years**. This is challenging, but every effort will be made to meet this.

The income target for 2017/18 of £362k is on track to be delivered.

4.7 Table 2 and some initial lessons learnt:

- Table 2 shows that there has been an increase of 55 mandatory licences over the 7 months from 1st April 2017 which is an increase of nearly 25% in the number of licensable properties in less than a year;
- As the additional licensing scheme is specifically targeted at HMOs above commercial premises and not all privately rented properties in an area or across the Borough as a selective licensing scheme would be, there is a much higher potential for “push-back” by landlords who dispute their properties fall within the conditions of the licensing scheme. This makes the work of the team very labour intensive focusing on proving the case, sometimes through Court rather than tackling disrepair and poor landlord practice.
- To identify small numbers of HMO there has been extensive visiting and database and on line research. The team are undertaking extensive visiting but for every 1000 properties visited officers only identify around 4.5% or 45 possible HMOs. Support through better data access is needed to help identify possible properties.

4.7 To support the delivery of the licensing programme officers are:

- utilising data from key data sources, including Council Tax and Waste Management. Unfortunately the data has not been that useful to our work and the success rate is the same with standard visits. However we have agreed to be part of the development of the data platform as part of the Housing Trailblazer which will pull data from a range of sources across the Council to highlight potential HMOs.
- utilising the GIS mapping system to identify privately rented accommodation around transport hubs; near colleges and above pubs as they are often sources of higher than average HMOs and as a way of identifying rented properties that are above commercial premises. A programme of visits are underway;
- introduced a programme of monthly street surveys targeting particular streets and visiting them over two - three days, flooding the area with enforcement staff. Officers are assertive about their requirement to get into property to inspect, and serve Notices on tenants immediately if they refuse access. Areas are selected based on data and research – and this is overlaid by substantial local knowledge within the team. In October the survey was focused on Telegraph Hill. The survey only uncovered 6 potential new licensable properties (4 mandatory and 2 additional) but it also uncovered 1 overcrowded hostel with 74 occupants and one hostel with 94 occupants with unsatisfactory fire precautions. A joint visit with the fire brigade resulted in the LFB serving a Notice to improve fire safety. The Council’s PSHA also served a Notice to remedy overcrowding and disrepair. If the owners do not comply this will be prepared for immediate prosecution.

Although this exercise yielded less than expected licensable HMOs, what was uncovered has helped potentially to improve and possibly save lives of private renters, especially in the hostels which were close to being closed down by the LFB. It also acted as an opportunity to link with key agencies, promote our work

and train new staff and the area has now been fully inspected to allow the team to move to other areas as all properties across the Borough will be visited.

Other possible extensions to the licensing scheme:

- 4.8 The Government have agreed to extend the existing Mandatory licensing scheme as set out in the Housing Act 2004, removing the three storeys or more criteria so that any HMO with five or more occupiers, regardless of how many floors, will fall within the scope of the mandatory licensing scheme. In addition, the Government intends to extend mandatory licensing to flats which are occupied by five or more occupiers/two or more households if it is in a converted building or where part of a building is used for commercial or other non-residential purposes.
- 4.9 It is estimated that the current proposals will make an additional 174,000 HMOs subject to mandatory licensing nationwide. Currently conservative estimates for Lewisham based on data from Council Tax and planning enforcement is between 400 – 500 two storey HMOs in Lewisham. This however is only an estimate and data from these sources has not been wholly reliable for the PSHA. Data is being collected now as part of the current visiting regime but until the scheme is up and running it is difficult to assess the potential. It is likely that the bulk of these additional properties will be found in the South of the Borough where there has been an issue of conversions of 2 storey properties into HMOs.
- 4.10 It is envisage that the proposal will be brought into force April 2018 (at the earliest). There will be a six month grace period for landlords to comply with the new requirements. Failure to obtain the correct licence after the end of the grace period would allow the local authority to initiate criminal proceedings with unlimited fines imposed on those found guilty of an offence and the possibility of rent repayment orders being made or fixed penalty notices of up to £30,000. However the Council's approach will be to work hard with landlords to apply and conform to the requirements of the new licensing scheme and only use the full force of the law and the penalties available to those landlords who have no intention of complying.
- 4.11 Like Lewisham, some other Boroughs have also introduced other additional or selective licensing schemes to tackle specific problem areas. The details of other Borough schemes can be seen at Appendix 1. Even with the new "below 3 storey" HMO extension scheme due next year Councils will still retain the ability to introduce other selective or additional licensing schemes if they meet the prescribed conditions. As our knowledge, experience and robust data collection expand and improve with both the current Mandatory and Additional licensing schemes then consideration could be given to proposing further extensions to target problem areas that are being uncovered.
- 4.12 Our current visit programme shows that there are pockets of poor housing across the Borough in selective areas, largely in the north of the Borough. There may be options, within existing resources, to target specific locations, building on the work of the street surveys to tackle the worst form of PRS housing in specific geographical areas. This could be done through the introduction of a targeted selective licensing scheme (which includes all rented accommodation not just HMOs) in a specific selected geographical area. Secretary of State approval would be needed if any selective licensing scheme is introduced that would impact on more than 20% of the Borough, but the work to date shows there is more of a need for a targeted response at a neighbourhood level for the best results.
- 4.13 The idea of introducing an "all-Borough" selective scheme was considered in 2015 but there was a lack of robust evidence to support the need to have this type of scheme. Data would be much more readily available at a more local level to support a targeted selective scheme. There is also a lack of support nationally and within

London for whole Borough schemes and therefore Government approval and sign off would be unlikely. If a targeted “selective” scheme that licensed all rented accommodation in an area was introduced this would:

- avoid current disputes with landlords on whether their properties comply.
- Tackle the many properties the team find that are in poor condition but not HMOs adding licensing to the enforcement tools available to the Council for non HMOs in specific areas;
- Support the aims of the Agency to work much more closely at a neighbourhood level with Councillors, Police, Tenants and local organisations as well as representatives from planning enforcement and the Crime, Enforcement and Regulation services who have an interest in specific neighbourhoods.

4.14 To take forward a proposed focused selective licensing scheme evidence would be needed from the data from the current visits; from existing Council systems like Council Tax, Planning Enforcement, Building Control and Waste Management; and from external sources like the Police and GPs to support the development of a robust business case. Work is underway to strengthen and consolidate enforcement work and data collection that would support the development of a business case.

If in addition to the current schemes a further targeted selective licensing scheme was introduced there are some issues that would need to be considered, including:

- The concern that costs will be passed onto tenants and will reduce supply of affordable rented housing;
- Any area selected would require an assessment on equalities grounds;
- Availability of resources;
- Introducing a selective scheme at the same time as a possible expansion of the mandatory scheme will impact on available resources.

4.15 The overarching aim of the existing private rented sector licensing schemes in Lewisham is to ensure those properties that are most “at risk” of poor condition where there are shared facilities or where they are above commercial premises are assessed within the licensing framework to ensure they at least meet the legal minimum standards around fire safety, repair and management standards. Any new scheme would need to meet that aim.

Further reports will be brought back to the Committee as this programme of work develops.

5. Rogue Landlords and Controlling Migration Fund:

5.1 Through previous funding from DCLG, Lewisham was at the forefront of the work on Rogue landlords within London, despite having very limited resources to deal with this problem. However as these resources further disappeared the work to tackle the worst criminal landlords operating in the Borough was reduced to what could be achieved by the enforcement team without dedicated officers. However the rogue landlord problem has not gone away.

5.2 At the end of the last financial year the DCLG offered additional - Controlling Migration - funding (CMF) to tackle rogue landlords across the capital to include all exploited citizens but also looking at recently migrated members of the community as they are often the most vulnerable and open to exploitation. The

funding was to be used to tackle landlords who often subjected tenants to horrendous living conditions, illegal evictions and excessive or illegal fees. The proliferation of properties which are run by criminals has wider spread negative impacts on the established resident community, often as a consequence of overcrowding and poor maintenance.

5.3 To tackle the problem of rogue landlords in the borough we have secured £200k funding from this pot for 2 years. The funding is to support the appointment of two specialist posts (Private Sector Housing Fraud and Intelligence Officer) one officer from a police background the other a lawyer as well as support for the London Wide London Lockdown partnership project. Officers have been working since July 2017, investigating reports of criminal activity as related to housing offences, preparing prosecution packs for our legal team to progress and to provide an immediate response where there are ongoing illegal evictions. The numbers of prosecutions have already increased with four new cases being referred to legal services for prosecutions since July, and two in the pipeline. That compares to two cases over the last 2 years. The numbers are small but the work to investigate and collate evidence for court is slow and time consuming. In addition to working on priority cases these officers also tackle around 20 cases of illegal eviction per month, resolving evictions where it is safe to get the tenant back into their home. These two posts will also be responsible for the improving the Council's understanding of the rogue landlord problem in Lewisham by maintaining the Rogue Landlord list of the worst offenders, working in partnership with other key departments and other Councils.

The main purpose of their role is to:

- track rogue landlords across the borough, utilising data that is already collected and adding new data and facts to build a comprehensive picture of the activities of the landlords.
- Develop a clearer picture of the rogue landlord problem (the true extent of the problem across the borough, risk factors, at risk groups, repeat offenders, understanding of interface with criminal activity such as running of cannabis farms or brothels;
- Fully utilise intelligence from as many local partners as possible and work collaboratively, sharing knowledge amongst local partners.
- Identify at risk occupants and work with internal teams, and partners to ensure that support and housing advice and options are provided, particularly in cases where criminal landlords are being prosecuted;
- Initially target 10 of the worst offending for in-depth investigation and prosecution where this is possible;
- Build case files for individual landlords specifically geared for successful prosecution.

A recent case study example of a prosecution file that has been referred to legal services from the rogue landlord team relates to a landlady who said that she was not letting out 2 windowless basement flats. On inspection the rooms were found to be clear although a Prohibition Notice was served. On a re-inspection in the early hours of the morning after obtaining a warrant, 8 people were found living in bunk beds in these small rooms. A summons has been served and the case is progressing to court.

A second case relating to a property in Downham involved a landlord trying to "persuade" a tenant to leave in order to upgrade property and re let to more affluent tenant at a much higher rent. The tenant had a long standing tenancy and was not willing to give up possession as they had no other option for housing. The landlord cut off the water and gas, and attempted to physically evict the tenant, during which the tenant was bitten on the arm. Police were called and tenant was reinstated. The landlord refused to attend a PACE interview and case has been presented for prosecution.

6. **Refreshing the Private Sector Housing Enforcement and Licensing Policy – Housing & Planning Act 2016:**

- 6.1 The Housing Enforcement services of the Council currently operate within the framework of the Private Sector Housing Enforcement and Licensing Policy as agreed in 2006. This policy has been refreshed to incorporate best practice and to maximise the opportunities provided by legislative changes contained in the Housing and Planning Act 2016 (although some powers are yet to be brought forward). The full draft Private Sector Housing Enforcement and Licensing Policy October 2017 can be made available on request.
- 6.2 This Housing and Planning Act 2016 includes some new powers and obligations introduced by the Government to tackle rogue landlords and improve standards in an increasingly important housing sector. The key proposed change relates to the introduction of Civil Penalty Notices (CPN) which are summarised below and at **Appendix 2** for Committee to consider before implementation.
- 6.3 Civil Penalty Notices (CPN). The powers conferred by the Housing and Planning Act 2016 (HPA 2016), allow local authorities to issue a Notice of the intention to impose a Civil Penalty of up to a maximum of £30,000, as an alternative to prosecuting offences under the Housing Act 2004. Currently cases that are presented to Court for breaches under the Housing Act are time consuming and expensive to administer. A successful prosecution may only result in the Council receiving the court costs and not the fine imposed. The CPN allows the Council to retain any financial penalties imposed for specific breaches of the 2004 Act, relating to landlords who, for example, fail to comply with Improvement or Overcrowding Notices, breaches of the HMO licensing conditions, or failure to licence. This income can be used to support the enforcement work of the team.

The process starts at the point where a formal intervention has taken place, so an Improvement or Overcrowding Notice has been issued for example in line with the Councils Enforcement Policy, and not complied with by the landlord. (The procedure for issuing a CPN is set out in Schedule 13A Housing Act 2004 and DCLG Civil Penalties Guidance under the Housing & Planning Act 2016).

There are 2 stages to issuing a CPN.

- Issue a Notice of Intent which gives the landlord/defendant 28 days to make representations;
- Issue a Final Notice which confirms the amount to pay, the reason for imposing the CPN and the period of payment. It also sets out the consequences of failing to reply and the rights of appeal to the First Tier Tribunal.

The work to prepare the case and present the case will sit with the Enforcement team in the Agency. There will be a decision making/adjudication process that sits within the legal team as it needs to be independent of the Agency and the enforcement service. The process for agreeing the issuing and awarding a CPN will be finalised with colleagues across the key services of Housing & legal services and the new CPN process launched early in the new year following consideration of this new power by Committee & Mayor & Cabinet.

CPNs cannot be imposed for unlawful eviction, harassment, or failure to comply with a prohibition notice.

The level of the penalty would be calculated based on a proposed matrix set out in the **Appendix 2**. This matrix is based on accepted best practice within the sector.

It is envisaged that the Council, would still submit cases for prosecution to the Criminal Court for the most serious or repeat offenders where it is agreed that a criminal prosecution is most appropriate.

As this policy potentially affects a number of landlords across the Borough support is sought from Members to submit a report to Mayor & Cabinet to get agreement to introduce Civil Penalty Notices into the toolkit for the Private Sector Housing Agency.

6.4 Other areas relevant to the work of the Agency include the creation of a National Rogue Landlord and Property Agent Database, that will sit alongside the London Mayors proposals and the extension of Rent Repayment Orders (RROs). The Act also introduces Banning Orders which can prevent an unfit person from being a landlord/letting agent, but the legislative detail is yet to be published. All the existing enforcement powers under the various Acts in use in the Agency remain in place. These tools below are additions to current Enforcement powers:

- National Rogue Landlord Database: A national database of rogue landlords and property agents has been introduced which is accessible to local and central government bodies. The database will include information on landlords who have been served with a banning order, convicted of a banning order offence, or have received two or more Civil Penalties Notices. There is ongoing consultations as to which criminal offences should be regarded as banning order offences and will therefore be included on the database. The database will also include details of any letting agents who persist in charging fees to tenants after the new regulations banning this activity come into force.
- Extension of Rent Repayment Orders (RROs): Tenants or the Council may apply to the First Tier Tribunal ((FTT) for the repayment of rent, either rent paid by the tenant or rent paid through Housing Benefit. Under the HPA 2016 tenants now do not need to rely on the local authority obtaining a conviction before they can make their own application for an RRO. The FTT would however need to be satisfied beyond a reasonable doubt that an offence has been committed if either a tenant or the Council made an application for a RRO. An application for a RRO can be made if there has been a breach of a key section of the Housing Act 2004 including failure to comply with a prohibition notice or breaches specifically relating to not having a licence, failure to comply with Notices relating to, for example, overcrowding or the issuing of management regulations. A RRO application can also be made for other legislative breaches committed by landlords and property agents that affect their tenants including the Criminal Law Act 1977 (S6(1) and Protection from Eviction Act 1977 (S1(2), (3) or (3A).
- Banning Orders: Local authorities are waiting for a legislative update following consultation. The aim of introducing banning orders is to rid the sector of the worst rogue landlords and as a result improve property and management standards within the private rented sector. They will also help local authorities to take robust and effective action against rogues who knowingly rent out unsafe and substandard accommodation.

Landlords subject to banning orders will also not be able to earn income from renting out housing or engaging in letting agency or property management work. Proposed banning order offences as outlined in the government consultation include:

- illegally evicting a tenant
- renting out a property decided to be unsafe as a dwelling by local authorities
- failing to carry out works required by local authorities to prevent health and safety risk to tenants
- renting out a property to an illegal migrant

- using violence, or threatening violence against a tenant
- making fraudulent applications for housing benefit, or committing identity theft
- using the property to cultivate cannabis
- theft or criminal damage
- colluding with the tenant to commit a criminal offence, such as tax evasion or the supply of illegal drugs.

Officers are waiting further advice from Government but are proposing to add this tool to the revised Enforcement policy after guidance is issued.

7. Empty Homes

- 7.1 Long term empty properties (those that have been empty for at least 6 months) are eyesore dwellings that are a cause of complaint and nuisance from neighbours and local communities, and are a priority for the Council. Empty Homes Grants are one of a range of options to help bring empty properties back into use for homeless families and these save the Council £10k per annum per letting for any property available as an alternative to B&B. Bringing empty homes back into use also helps the Council maximise its New Homes Bonus.
- 7.2 The number of long term (6 month empties) has increased to 16% from 812 in 2016/17 to 939 for 2017/18. The total number of dwellings in the borough has risen from 125,059 to 126,823 an increase of 1.41%. This amounts to 0.74% of the borough's housing stock. However Lewisham's percentage of empty properties remains in the lower quartile across London boroughs. Final confirmation of this is awaited from returns submitted to the Department of Communities and Local Government (DCLG).
- 7.3 The Empty Homes service is working on tackling six complex hoarding cases where the hoarding in these cases has forced the owners to abandon their dwellings and some have fallen into serious disrepair. There is a lot of cross-service partnership working, including with social care and liaison with the owners to help support clearance and property repair.
The pot of funding provided by the Greater London Authority (GLA) to bring empty properties back into use has come to an end.

8. Financial implications

- 8.1 The purpose of this report is to update members on the work of the Private Sector Housing Agency (PSHA), which includes progress on the implementation of the additional scheme introduced in February 2017. As such, there are no direct Financial Implications arising from this part of the report.
- 8.2 The report also provides a summary of the key policy changes and developments relevant to the Private Rented Sector (PRS) such as extending the mandatory scheme to remove the 3 story or more criteria and the introduction of selective targeting. Where necessary, the financial implications of each issue will be considered in specific reports as matters progress.
- 8.3 The first tranche of funding from the DCLG controlling migration fund has been received by the authority following a successful bid for additional resources. This will enable the authority to employ two officers to tackle rouge landlord issues.

9. Legal implications

The Housing and Planning Act 2016 (HPA) introduces new provisions which are intended to penalise unscrupulous and irresponsible landlords who fail to provide safe and healthy accommodation. These new provisions / powers include;

- Civil penalties of up to £30,000
- Extension of Rent Repayment Order
- Banning orders for most prolific offenders
- Database of rogue landlords/property agents
- Tougher fit and proper person test for landlords of licensed properties
- Sharing data on tenancy deposit schemes with local authorities.

The most significant of those listed above is the introduction of civil penalties. Section 126 of The Housing and Planning Act 2016 (which came into force on 10 March 2017), and amends the Housing Act 2004, allows financial penalties to be imposed as an alternative to prosecution for certain offences as set in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which has the financial penalties as an alternative to prosecution. The details of the offences to which a civil penalty may be imposed are as set out in Appendix 2 referenced in paragraph 6.3

Unlike fines issued by the Courts when criminal prosecutions are taken, income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector. This means that any income received from civil penalties issued can be reinvested into carrying out more enforcement work to bring about further improvements within the private rented sector (PRS).

The Council's additional powers and duties under the Housing Act 2004, as amended by the Housing and Planning Act 2016, along with other relevant legislation are also set out in the body of this report.

The Equality Act 2010 (the Act) introduced a new public sector equality duty (the quality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

The duty continues to be a 'have regard duty' and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice".

- The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty.
- The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions.
- The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value.
- The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- i. The essential guide to the public sector equality duty
- ii. Meeting the equality duty in policy and decision-making
- iii. Engagement and the equality duty
- iv. Equality objectives and the equality duty
- v. Equality information and the equality duty

The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

10. Crime and disorder implications

10.1 There are no crime and disorder implications arising from this report

11. Equalities implications

11.1 There are no equalities implications arising from this report.

12 Environmental implications

12.1 There are no environmental implications arising from this report.

13. Originator

For further information please contact Madeleine Jeffery (Private Sector Housing Agency Manager) on Madeleine.jeffery@lewisham.gov.uk or 0208 314 9484.

Appendices:

- Appendix 1 = Other Borough Licencing schemes summary
- Appendix 2 = Civil Penalty Notices matrix

Appendix 1 – Summary of other Borough licensing schemes;

List of London Boroughs with Mandatory and Additional and/or Selective licensing schemes operating in all or part of their boroughs.

London Borough of Barking & Dagenham

Licence Overview - Additional, selective and mandatory HMO licensing schemes all apply borough wide

Camden

Licence Overview - No selective licensing in Camden but mandatory HMO and additional licensing schemes apply borough wide.

Croydon

Licence Overview - Mandatory HMO and selective licensing applies borough wide. There is no additional licensing scheme.

Ealing

Licence Overview - Mandatory HMO and additional licensing schemes apply borough wide. A selective licensing scheme covers part of the borough.

Greenwich

Licence Overview - No selective licensing in Greenwich but the mandatory HMO licensing scheme applies borough wide. An additional licensing scheme started on 1st October 2017.

Hammersmith and Fulham

Licence Overview - Mandatory HMO licensing applies borough wide. Additional and selective licensing schemes started on 5th June 2017

Haringey

Licence Overview - Mandatory HMO licensing scheme applies borough wide and additional licensing applies to part of the borough. There is no selective licensing scheme.

Harrow

Licence Overview - Mandatory HMO and additional licensing schemes apply borough wide. There is selective licensing in 2 wards. The council recently consulted on plans to extend selective licensing to another two Wards.

Havering

Licence Overview - No additional or selective licensing in Havering but the mandatory HMO licensing scheme applies borough wide.
An additional licensing consultation took place from 19 May to 28 July 2017.

Hillingdon

Licence Overview - No selective licensing in Hillingdon although mandatory HMO licensing applies borough wide and additional licensing applies to part of the borough.

Hounslow

Licence Overview - No selective licensing in Hounslow although mandatory HMO and additional licensing applies borough wide.

Islington

Licence Overview - Mandatory HMO licensing scheme applies borough wide and an additional licensing scheme applies to part of the borough. There is no selective licensing scheme.

Kingston Upon Thames

Licence Overview - No selective licensing in Kingston upon Thames although mandatory HMO and additional licensing applies borough wide.

Newham

Licence Overview - Additional, selective and mandatory HMO licensing schemes all apply borough wide. Are looking for a further 5 year extension to their selective scheme.

Redbridge

Licence Overview - Borough-wide additional licensing started on 13 April 2017 and a selective licensing scheme started on 13 July 2017. The mandatory HMO licensing scheme applies borough wide.

Southwark

Licence Overview - Mandatory and additional HMO licensing applies borough wide. There is a smaller selective licensing scheme that covers part of the borough.

Tower Hamlets

Licence Overview - No additional licensing in Tower Hamlets but the mandatory HMO licensing scheme applies borough wide. A selective licensing scheme covers part of the borough.

Waltham Forest

Licence Overview - There is no additional licensing scheme but selective and mandatory HMO licensing schemes both apply borough wide.

Please note any London borough that has not been included on this list is only taking part in the national Mandatory HMO licensing scheme

Appendix 2 – Civil Penalty Notices – proposed charging matrix

Culpability

| | | Very High | High | Moderate | Lesser |
|-------------|--------------|--------------------------------------|--------------------------------------|--------------------------------------|---|
| Harm | Very Serious | Range 15k-30k Starting point: 25k | Range 15k-30k Starting point: 20k | Range 8k-18k Starting point: 13k | Range 5k-10k Starting point: 7.5k |
| | Serious | Range 15k-30k Starting point: 20k | Range 8k-18k Starting point: 13k | Range 5k-10k Starting point: 7.5k | Range 3k-6k Starting point: 4.5k |
| | Moderate | Range 8k-18k Starting point: 13k | Range 5k-10k Starting point: 7.5k | Range 3k-6k Starting point: 4.5k | Range 1k-4k Starting point: 2.5k |
| | Lesser | Range 5k-10k Starting point: 7.5k | Range 3k-6k Starting point: 4.5k | Range 1k-4k Starting point: 2.5k | Range £250-1.5k Starting point: £750 |

- The process starts at the point where a formal intervention has taken place, so an Improvement or Overcrowding Notice has been issued for example in line with the Councils Enforcement Policy, and not complied with by the landlord. (The procedure for issuing a CPN is set out in Schedule 13A Housing Act 2004 and DCLG Civil Penalties Guidance under the Housing & Planning Act 2016).
- There are 2 stages to issuing a CPN.
 - Issue a Notice of Intent which gives the landlord/defendant 28 days to make representations;
 - Issue a Final Notice which confirms the amount to pay, the reason for imposing the CPN and the period of payment. It also sets out the consequences of failing to reply and the rights of appeal to the First Tier Tribunal.
 - The work to prepare the full details of the case and present it to panel will sit with the Enforcement team in the Agency. There will be a decision making/adjudication process that sits within the legal team as it needs to be independent of the Agency and the enforcement service. The process for agreeing the issuing and awarding a CPN will be finalised with colleagues across the key services of Housing & legal services and the new CPN process launched early in the new year following consideration of this new power by Committee & Mayor & Cabinet.
- The 4 categories of harm will be assessed against the 4 categories of harm which are based on the Housing Health and Safety Rating System (HHSRS). This assessment tool is used by all enforcement and licensing officers. The seriousness of the outcome “harm” on the vertical axis collates with the seriousness of the landlord/defendant’s conduct “culpability” on the horizontal axis to produce the starting point. The starting point will be adjusted following consideration of specified “matters to consider” which are contained

within the main DCLG Guidance document (para 3.5), and listed below. CPNs can move between bands if case is unusual

- The harm caused to the tenant;
 - Punishment of the offender;
 - Deter the offender from repeating the offence;
 - Deter others from committing similar offences;
 - Prevent the offender from benefitting financially;
 - Offender's previous history;
 - Severity of offence;
 - Whether offender admits or denies offence;
- The CPN can be registered as a judgement debt and can be enforced through the County Court.
 - This matrix is based on accepted best practice within the sector.

CPNs cannot be imposed for unlawful eviction, harassment, entry with violence or failure to comply with a prohibition notice. It is envisaged that the Council, would still submit cases for prosecution to the Criminal Court for the most serious or repeat offenders where it is agreed that a criminal prosecution is most appropriate.

Copies of the full draft processes are available on request from
Sean.Longley@lewisham.gov.uk

<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>